

**COMPLAINT INVESTIGATION SUMMARY**

**COMPLAINT NUMBER:** 1778.01  
**COMPLAINT INVESTIGATOR:** Sandie Scudder  
**DATE OF COMPLAINT:** June 27, 2001  
**DATE OF REPORT:** July 27, 2001  
**REQUEST FOR RECONSIDERATION:** no  
**DATE OF CLOSURE:** October 1, 2001

**COMPLAINT ISSUES:**

Whether the Kokomo-Center Township Consolidated School Corporation and the Kokomo Area Special Education Cooperative violated:

- 511-IAC 7-28-1(f) with regard to the school's requirement that the parent obtain physician's orders before providing the student with occupational therapy.
- 34 CFR 300.344(a)(5) with regard to the school's alleged failure to include in the April 14, 2000, case conference committee (CCC) meeting an individual who can interpret the instructional implications of evaluation results.
- 511 IAC 7-27-3(a)(3) with regard to the school's alleged failure to include in the May 1, 2001, CCC, a general education teacher.
- 511 IAC 7-27-10(b) with regard to the school's alleged failure to convene the CCC at least every sixty instructional days for a student who has been placed on homebound instruction.
- 511 IAC 7-27-7(a) with regard to the school's alleged failure to implement the student's individualized education program (IEP) as written, specifically:
  - a. failing to provide speech therapy; and
  - b. failing to provide occupational therapy.
- 511 IAC 7-29-5(a) with regard to the school's alleged failure to convene the CCC within 10 business days after suspending the Student for more than 10 cumulative instructional days to develop a plan for a Functional Behavioral Assessment or to review an existing Behavioral Implementation Plan.
- 511 IAC 7-29-6(g) with regard to the school's alleged failure to discontinue the Student's suspension upon the CCC's determination that the Student's misbehavior is a manifestation of the Student's disability.

**FINDINGS OF FACT:**

1. The student ("Student") is 6 years old and is eligible for special education and related services as a student with a mild mental disability and a communication disability. The Student enrolled in a half-day kindergarten program for the 2000-2001 school year but, due to behavioral problems, was placed on homebound January 30, 2001.
2. The Complainant was provided a school form, "Physician's Orders for Occupational Therapy," to be completed by the Student's physician as a prerequisite to the Student receiving an occupational therapy evaluation. The Student's physician signed the form on August 15, 2000. The student was evaluated for occupational therapy on October 23, 2000.

3. The Student's re-evaluation was discussed during the April 14, 2000, CCC meeting. Due to the absence of the psychologist, the special education administrator and the special education teacher, who attended the CCC meeting on April 14, 2000, explained the results of the evaluation to the Complainant. The Complainant stated that she had no unanswered questions regarding the re-evaluation at the end of the CCC meeting.
4. The CCC meeting convened on January 30, 2001. The CCC Report noted that the purpose of the January 30 CCC meeting was to discuss behavioral and physical concerns that the Student was having in school. Page 3 of the CCC Report indicates that the CCC conducted a manifestation determination and concluded that the student's behavior was a manifestation of the Student's disability. The Student was placed on homebound effective January 31, 2001, due to behaviors which "are harming himself and others," and due to "medical liabilities to himself and others and his inappropriate behaviors." The next CCC meeting was convened on May 1, 2001. Based on the school calendar, the required 60 instructional days for reconvening the CCC expired on May 4, 2001.
5. The Student was placed on homebound on January 30, 2001, and the CCC convened on May 1, 2001. The CCC Report dated May 1, 2001, states: "A general education teacher was not brought into the conference because we are not returning him to day school." The Director stated that the Student was receiving homebound services on May 1, 2001, and was not expected to participate in the general education program in the fall of 2001-2002, due to the severity of his learning and behavioral needs.
6. The Complainant stated that the Student did not receive speech therapy during the time he was placed on homebound. The IEP dated September 22, 2000, states that the Student was to receive 60 minutes of speech therapy per week for the 2000-2001 school year. The IEP does not indicate whether speech therapy was to be provided in a single sixty-minute session or in multiple shorter sessions each week. The CCC Report dated January 30, 2001, noted that the September 22, 2000, IEP was reviewed, but did not state how speech services would be delivered to the Student while on homebound. The CCC Report dated May 1, 2001, states that speech therapy would be implemented by the homebound teacher through June 5, 2001. However, the School did not provide any documentation to demonstrate the Student had been provided with speech therapy during the second half of the 2000-2001 school year. Further, there is no documentation that the homebound teacher is appropriately licensed to provide speech therapy.
7. The Complainant stated that the Student did not receive occupational therapy during the time he was placed on homebound. The CCC Report dated November 20, 2000, states that the Student was to receive occupational therapy services on a consultation basis for thirty minutes each month. The CCC Report dated January 30, 2001, includes the statement "consult on related services." There is no explanation of what "consult on related services" means. The CCC Report dated May 1, 2001, states that occupational therapy will be provided by the homebound teacher through June 5, 2001. The School did not provide any documentation to demonstrate the provision of occupational therapy during the second half of the 2000-2001 school year, nor was there any documentation that the homebound teacher was appropriately licensed to provide occupational therapy consultation.
8. The Student was sent home early from school on a number of occasions during the first half of the 2000-2001 school year due to his behavior. The Director states that the School did not consider these unilateral removals from the classroom as suspensions, and no record of these removals was kept by the School. On the days the student was sent home early, he was not marked absent for the remainder of the half-day.

9. The School reports that a Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP) were developed at the September 22, 2000 CCC meeting. However, the original documentation of the FBA and the BIP no longer exists; the School reports they were written on the wrong form and thrown away after being rewritten on the correct forms at the January 30, 2001, CCC meeting. The BIP does not include that the Student would be sent home as a consequence for his behavior.

#### **CONCLUSIONS:**

1. Finding of Fact #2 indicates that, in August 2000, the Complainant was asked to provide doctor's orders before the Student received an occupational therapy evaluation. Article 7 does not require a referral from a physician before an occupational therapy evaluation can be conducted. Therefore, a violation of 511 IAC 7-28-1(f) occurred. However, the School took appropriate corrective action in April 2001 to address this issue in accordance with the corrective action required in Complaint #1710.01, and no further corrective action is warranted.
2. Finding of Fact #3 reflects that a special education administrator and the Student's special education teacher interpreted testing information during the CCC meeting on April 14, 2000, rather than a school psychologist. The special education administrator and the special education teacher were knowledgeable of the testing procedures and were able to answer the Complainant's questions. Therefore, no violation of 34 CFR 300.344(a)(5) occurred.
3. Finding of Fact #5 indicates that there was not a general education teacher present at the CCC meeting on May 1, 2001. The CCC Report dated May 1, 2001, states that the Student would not be participating in the general education environment due to severe behavioral difficulties. Therefore, no violation of 511 IAC 7-27-3(a)(3) occurred.
4. Finding of Fact #4 indicates that the CCC was reconvened within the required 60 instructional day period. The Student was placed on homebound during the January 30, 2001, CCC meeting. The CCC reconvened 57 instructional days later on May 1, 2001. Therefore, no violation of 511 IAC 7-27-10(b) occurred.
5. Findings of Fact #6 and #7 reflect that the Student's IEP required the Student to receive speech therapy and occupational therapy consultation while receiving homebound instruction during the second half of the 2000-2001 school year. No documentation was submitted to demonstrate that speech therapy and occupational therapy were provided in accordance with the IEP. Therefore, a violation of 511 IAC 7-27-7(a) occurred.
6. Finding of Fact #8 reflects that, on a number of occasions, the School unilaterally removed the Student from the classroom and sent the Student home prior to the end of the instructional day as a result of his behavior. Although the School asserts that the instances of sending the student home early are not suspensions, 511 IAC 7-29-1(a) defines a suspension as the "unilateral, temporary removal of a student from the student's current placement by the public agency." The only exception to that is when the short-term removals are pursuant to the Student's IEP. Finding of Fact #9 indicates that the Student's BIP did not include a provision for sending the Student home early. When the School unilaterally removed the Student from the classroom and sent the Student home prior to the end of the Student's instructional day as a result of the Student's behavior, that removal constituted a suspension. 511 IAC 7-29-1(c) provides that suspending a student for part of a day counts as a day of suspension. Therefore, each time the School sent the Student home early as the result of the Student's behavior, the Student was suspended for a day. Because the School did not document the number of suspensions, it is impossible to determine whether the Student was suspended for more than ten cumulative instructional days during the first half of the

2000-2001 school year. When a student is suspended for more than ten cumulative instructional days, the School is required to provide services in accordance with 511 IAC 7-29-1(h) and 511 IAC 7-29-5(a). As a result of the School's failure to document the "early removals," the School cannot demonstrate compliance with 511 IAC 7-29-5(a); therefore, a violation occurred.

7. 511 IAC 7-29-6(g) precludes the School from suspending a student for behavior that the CCC has determined to be a manifestation of the Student's disability. Finding of Fact #3 indicates that the Student's behavior was determined to be a manifestation of the Student's disability on January 30, 2001. The CCC determined the Student's placement should be changed to homebound, effective January 31, 2001. The Student continued this placement for the remainder of the 2000-2001 school year, and no further suspensions occurred subsequent to the manifestation determination. Therefore, no violation of 511 IAC 7-29-6(g) occurred.

**The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

**CORRECTIVE ACTION:**

The Kokomo-Center Township Consolidated School Corporation and the Kokomo Area Special Education Cooperative shall:

1. convene the CCC to determine the amount of compensatory speech therapy and occupational therapy the Student will receive as a result of the interruption in services between January 31 and June 5, 2001. **A copy of the CCC Report detailing the CCC's determination of compensatory therapy services and a copy of the IEP describing the delivery of the compensatory therapy services shall be submitted to the Division no later than September 7, 2001.**
2. review and, if necessary, revise its policies and procedures on the temporary unilateral removal of a student with a disability from the student's placement to ensure that such removals are documented as a day of suspension and that procedures are in place to ensure compliance with the requirements of 511 IAC 7-29-1 and 511 IAC 7-29-5. The school shall also notify all Kokomo-Center Township building administrators in writing of the policies, procedures, and the requirements of 511 IAC 7-29-1 and 511 IAC 7-29-5. **A copy of the policies and procedures and the written notification to building administrators shall be submitted to the Division no later than September 29, 2001.**

DATE REPORT COMPLETED: July 27, 2001